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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,298	10/28/2003	Mark Zwicker	10203.85USU1	5116
23552	7590	10/31/2008	EXAMINER	
MERCHANT & GOULD PC			NELSON, FREDA ANN	
P.O. BOX 2903				
MINNEAPOLIS, MN 55402-0903			ART UNIT	PAPER NUMBER
			3628	
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			10/31/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,298	ZWICKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	FREDA A. NELSON	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 July 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-29 and 31-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

The amendment received on July 29, 2008 is acknowledged and entered.

Claims 1-3, 11-12, 21-29, 31-32, and 35-38 have been amended. Claim 30 has been canceled. No claims have been added. Claims 1-29 and 31-38 are currently pending.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on July 29, 2008 has been entered.

***Response to Amendments and Arguments***

2. In response to Applicant's argument that in regards to claim 1, Alfred et al, Thompson et al. nor Whiteknucklewelding.com fail to suggest an "*index product module for displaying all of available products that may be configured*" and "*a markup module and a price quoting module*", the examiner respectfully disagrees. Alfred et al. discloses that the quotation may be based on at least in part on the marked-up estimated cost; and the quotation is electronically communicated to the requestor ([0010],[0016]). Alfred et al. further discloses the requested product is selected from a plurality of products stored in a database

based on at least one product specification ([0011]). Furthermore, Applicant has discloses that all products are displayed at once.

3. In response to Applicant's argument that the combination of references fails to disclose "specifying an amount a dealer price is to be increased for a marine product and each optional item available for the marine product based upon a specified figure, the Examiner respectfully disagrees. Alfred et al. discloses the markup is determined based on at least one of a plurality of mark-up factors wherein the plurality of mark-up factors includes quantity requested, product type, and product features ([0016]).

4. In response to Applicant's argument that in regards to claim 2, none of the cited references includes a first hyperlink corresponding to every product that is to be configured, the examiner asserts that Thompson et al. discloses the invention enables production of a variety of outputs, one of which can be an order form as shown; and the client manufacturer can derive the format, content and design of the order form from an existing form in use, wherein the order forms can contain all codes 26 necessary to build a specified product as well as pricing and dealer/distributor information. The order form is a tabular view of the information needed to build the set of products defined by a particular project. Also included is an "electronic order form" mechanism through which comma or tab delimited ASCII files can be created and exported. These files can be imported by other applications and may be designed to meet the needs of each manufacturer ([0098]; FIG. 16); and the portal provides the central services for its participating members, providing news, advertisements, means for

communication between members. The portal also provides a member-to-member commerce channel providing product offerings, configuration tools, ordering and purchasing mechanisms. Fees can be charged for membership to the portal, advertisements viewed or displayed on the portal, or as part of any member-to-member commerce transactions ([0120]; also see claim 20).

Thomspion et al still further disclose this function set allows a project to be constructed by a customer and then imported by a dealer, distributor or sales representative for quote generation, final order pricing adjustment and negotiation. Similarly, projects can be shared between dealers, sales-people and customer service personnel (0106)} [The Examiner interprets this to mean that the system of Thompson et al. discloses hyperlinks to products and product information].

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. As per claims 1-11, the claims as recited appear to be directed to data structure, logic, or software for a computer. Thus, the claims are directed to functional descriptive material that is not functionally or structurally interrelated to any medium. Data structures not claimed as embodied on statutory computer

readable media (i.e., storage media, and excluding non-statutory media such as carrier waves) are descriptive material per se and therefore not patentable subject matter under § 101 as they are neither a process, a machine, a manufacture, nor a composition of matter. MPEP § 2106 IV.(g)(1)(a).

7. Claims 12-20 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials).

*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state).

Claims 12-20 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfred et al. (US PG Pub. 2003/0187808), in view of in view of Verchere (US PG Pub. 2001/0047312), in further view of Thompson et al. (US PG Pub. 2004/0068485), still in further view of Whiteknucklewelding.com.

As per claims 1, 12, and 21, Alfred et al. disclose an index product module operating on a computer system for displaying all of the available products that may be configured by the marine product configuration and pricing system ([0010]-[0011],[0016],[0101]; FIG. 7);

a markup module operating on a computer system for specifying the amount a dealer price is to be increased for a marine product and each optional item available for the marine product based upon a specified figure ([0004],[0016],[0060]; FIG. 3);

a price quoting generation module operating on the computer system for selecting the product and optional items to be included within a configured product, the price quoting generation module generating a customer price for the marine product, selected optional items, and a total price for the configured product using the pricing data from the markup module (FIGS. 7 and 8); and

a quote sheet module operating on the computer system for generating a quote sheet document containing information describing the configured product and its generated price (FIG. 8).

Alfred et al. do not expressly disclose a system for marine product configuration and pricing system; an index product module for displaying marine

products that may be configured and a markup module and a price quoting module for marine products.

However, Verchere discloses a method and system for configuring products wherein the method and system may be applied to other applications, such as, furniture, aviation supplies, **marine supplies**, interior design, beauty salon and spa supplies, medical office supplies, restaurant and bar supplies, gift shops and clothing boutique, and other industries where products and services may be ordered (abstract). Verchere further discloses the administrator (or other entity) may specify the descriptive and pricing characteristics applicable to the process used to display the logo or advertisement ([0045]).

Thompson et al. discloses although the preferred embodiments disclosed herein have been particularly described as applied to a configuration system and method for configuration of specific exemplary products (e.g., windows and doors), it should be readily apparent that the invention may be embodied to provide configuration and estimation functionality for any number of products, services or the like where configured, customized or assembled-to-order products/services are evaluated, selected, purchased, sold, supported, or otherwise considered (paragraph [0035],[0038]); and the portal provides the central services for its participating members, providing news, advertisements, means for communication between members. The portal also provides a member-to-member commerce channel providing product offerings, configuration tools, ordering and purchasing mechanisms. Fees can be charged for membership to the portal, advertisements viewed or displayed on the portal, or

as part of any member-to-member commerce transactions ([0120]; also see claim 20). Thompson et al still further disclose this function set allows a project to be constructed by a customer and then imported by a dealer, distributor or sales representative for quote generation, final order pricing adjustment and negotiation. Similarly, projects can be shared between dealers, sales-people and customer service personnel (0106}).

Whiteknucklewelding.com discloses that they specialize in Custom Marine products such as, T-Tops, RADAR Arches, Half Towers and Railings (see page 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Alfred et al. to include the feature of Verchere, Thompson et al. and Whiteknucklewelding.com, in order to provide a user a quote for a customized marine product.

As per claims 2-5 and 31-38, Alfred et al. do not expressly disclose wherein the index product module includes a second hyperlink corresponding to every product to be configured, the second hyperlink presents specification data corresponding to a particular product, wherein the specification data is displayed within an HTML document; wherein the specification data is displayed within a PDF document.

Thompson et al discloses the invention enables production of a variety of outputs, one of which can be an order form as shown; and the client manufacturer can derive the format, content and design of the order form from an

existing form in use, wherein the order forms can contain all codes 26 necessary to build a specified product as well as pricing and dealer/distributor information. The order form is a tabular view of the information needed to build the set of products defined by a particular project. Also included is an "electronic order form" mechanism through which comma or tab delimited ASCII files can be created and exported. These files can be imported by other applications and may be designed to meet the needs of each manufacturer ([0098]; FIG. 16).

Thompson et al. still further discloses the invention can also include an Import/Export function set which permits a project to be built on one computer and exported into a file format, which can be imported into the same application on another computer (provided the product knowledge sets are exactly the same) wherein this function set allows a project to be constructed by a customer and then imported by a dealer, distributor or sales representative for quote generation, final order pricing adjustment and negotiation. Similarly, projects can be shared between dealers, sales-people and customer service personnel ([0106]). Thompson et al. still further discloses the portal provides the central services for its participating members, providing news, advertisements, means for communication between members, wherein the portal also provides a member-to-member commerce channel providing product offerings, configuration tools, ordering and purchasing mechanisms. Fees can be charged for membership to the portal, advertisements viewed or displayed on the portal, or as part of any member-to-member commerce transactions ([0120]). [The

Examiner interprets this to mean that the system of Thompson et al. discloses hyperlinks to products and product information].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Alfred et al. to include the feature of Thompson et al. in order to provide the users with an electronic form which is generally associated with HTML pages for the purpose of displaying product information , as well as, ordering products.

Furthermore, information as to displaying specification data within an HTML document and a PDF document is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembicza* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed. The method steps, disclosed in would be performed the same regardless of where the data is displayed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that it was old and well known to display data within an HTML and PDF document because where the data is displayed does not functionally relate to the steps in the method claimed.

As per claims 6-7, Alfred et al. disclose the system according to claim 1, wherein the price quoting generation module utilizes a markup percentage value to specify an amount a dealer price is to be increased when generating a customer price (paragraph [0060]); and wherein the price quoting generation module utilizes a margin percentage value to specify the amount a dealer price is to be increased when generating a customer price (paragraph [0060]).

As per claim 8, Alfred et al. disclose the system according to claim 1, wherein the quote sheet module generates the quote sheet document containing only customer pricing (FIG. 8).

As per claim 9, Alfred et al. disclose the system according to claim 1, wherein the quote sheet module generates the quote sheet document containing only dealer pricing (paragraphs [0054],[0071][0108]).

As per claims 10, 19, and 28, Alfred et al. disclose the system according to claim 1, wherein the quote sheet module generates the quote sheet document containing both dealer pricing and customer pricing (paragraph [0108]).

As per claims 11, 13 and 22, Alfred et al. discloses the system wherein the quote sheet module further generates an optional item order sheet document for each optional item included within the configured product (FIG. 7); and wherein

the price increase value corresponding to a group of the selected one or more selected optional items corresponds to a single group price increase value specified in a set of price increase values (FIG. 7).

As per claim 14-15 and 23-24, Alfred et al. discloses the method according to claim 13, wherein the price increase value is defined as a markup percentage value (paragraph [0060]); and wherein the price increase value is defined as a margin percentage value (paragraph [0070]).

As per claims 16 and 25, Alfred et al. discloses the method, wherein the method further comprises modifying the price increase value for at least one of the price increase value corresponding to one of the selected optional items to generate a modified individual price quote document (paragraph [0108]).

As per claims 17-18 and 26-27, Alfred et al. disclose the method the method, wherein the individualized price quote document includes the customer price (paragraph [0108]); and wherein the individualized price quote document includes the dealer costs (paragraph [0108]).

As per claims 20 and 29, Alfred et al. disclose the method, wherein the method further comprises generating a set of ordering documents, each order document in the set of ordering documents corresponds to each of the selected

optional items (FIGS. 7 and 8).

***Examiner's Note***

9. Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- 1) Stingrayboats.com (Feb 07, 2003)
- 2) Hemmel, Jeff, "Cruising the Net", (April 2000), Bating Magazine, 2 pgs.  
( Stingrayboats.com (April 17, 2001)

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Wednesday and Friday, 10:00 AM -6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. A. N./  
Examiner, Art Unit 3628

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Supervisory Patent Examiner, Art Unit 3628